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TTY USERS CALL VIA MD RELAY

May 21, 2003

The Honorable Michael E. Busch
Speaker of the House
State House
Annapolis MD 21401

Dear Mr. Speaker:

In accordance with Article II, Section 17 of the Maryland Constitution, today I have vetoed House Bill 253 – *Higher Education – Resident Tuition Charges – Immigrant Students and United States Military Personnel and Dependents*.

Given my own upbringing, I am very sympathetic to the goal of providing educational opportunities as a means to open doors of opportunity. This bill, however, presents a difficult issue regarding people who are in this country without legal documentation. As you know, the first part of House Bill 253 exempts an individual other than a “nonimmigrant alien”—a term defined in Title 8, Section 1101 of the United States Code—from paying nonresident tuition at a public institution of higher education in the State under certain circumstances. An institution may not award a degree to a student who qualifies for resident tuition charges under the bill until the student files the required affidavit saying that he or she will file for permanent residency, or pays the difference between nonresident and resident tuition charges.

The second part of the bill deals with United States military personnel and dependents, and is largely duplicative of existing policy at Maryland’s institutions of higher education. Those that currently do not receive the benefit of resident tuition in this part of the bill are veterans who have received an honorable discharge, who do not meet the ordinary residency requirement but attended and graduated from a Maryland high school. In light of recent world events, it is appropriate to reward the men and women who put their lives on the line to protect our freedoms and our way of life. The addition of this admirable part of the bill late in the legislative session on the floor of the House of Delegates is not enough to justify signing House Bill 253 into Maryland law.

There are several reasons for my veto. First and foremost, there is a federal law that preempts the states from acting on this issue. In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress clearly spelled out its policy on this issue by passing into law the following provision:

Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident. 8 U.S.C. § 1623.

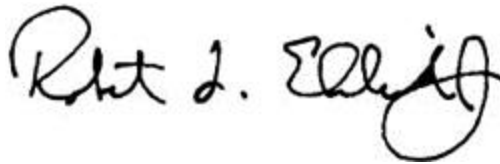
House Bill 253 attempts to circumvent this section by basing eligibility for in-State tuition not on residence, per se, but on where the undocumented immigrant attended high school. This is an approach which has been taken in a handful of other states since 2001, and which is too recent to have a record of being challenged in the courts. This approach, if it does not violate the law, certainly violates the spirit of Section 1623. Moreover, the approach leaves open the possibility that in-State tuition would be available to undocumented immigrants who physically reside in neighboring states or the District of Columbia, but attend successfully Maryland high schools.

Second, the fiscal note on this bill is indeterminate. The Department of Legislative Services is unable to determine what the cost of this law would be. Given the fact that community colleges must accept all applicants, the cost to the State under the Senator John A. Cade funding formula could be significant, especially if undocumented immigrants physically residing in other jurisdictions began attending Maryland's institutions of higher learning at the in-State tuition rate. State aid under the formula would be approximately \$2,113 per pupil in fiscal 2006, \$2,144 in fiscal 2007, and \$2,176 in fiscal 2008. The General Assembly is well aware of the fiscal crisis that Maryland is facing. Now is not the time to enact laws that could cost the State potentially large, but indeterminable, amounts of money.

Third, there is no requirement in House Bill 253 that Maryland's four-year institutions increase the number of people they accept for in-State tuition to account for the increase in applications from undocumented immigrants. Given the huge difference between in-State and out-of-State tuition at Maryland's institutions and the current fiscal crisis, it is highly improbable that these institutions would increase the number of in-State tuition acceptances and decrease the number of out-of-State tuition acceptances. As a result, it is reasonable to assume that undocumented immigrants—an indeterminate number due to the fact that many are in the country illegally and may physically be in other states—will take in-State tuition slots from legal Maryland residents. The purpose of in-State tuition is to provide a valuable benefit to the children of Maryland residents who live, work and pay taxes here. House Bill 253 undermines this purpose to the detriment of Maryland residents by offering this benefit to those who are not in the United States legally, and thereby rewards illegal behavior. This bill does not require the showing that the undocumented immigrant or his or her parents have been paying Maryland taxes for a certain period of time.

For the above stated reasons, I have vetoed House Bill 253.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Ehrlich, Jr.", with a stylized, cursive flourish at the end.

Robert L. Ehrlich, Jr.
Governor